

REMARKS

Claims 7-23 are pending in the application. Claims 9 and 16 have been canceled, claims 24-28 have been added, leaving claims 7, 8, 10-15, and 17-28 for consideration upon entry of the present Amendment. Claim 10 has been amended to rewrite the claim in independent form. No new matter has been entered by the amendment. Applicant respectfully requests reconsideration in view of the amendment and remarks submitted herewith.

Claims 7-9 and 11-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nordin (WO 97/30606) in view of Townsend, Jr. (U.S. 4,292,689). For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art; that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references; and that the proposed modification of the prior art must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970).

First, none of the references teach or suggest all of the limitations of the claims. In particular, claims 7-8 and 10-13 include the following limitation: "a plurality of light penetrating holes in the grid, the plurality of holes including a first group of holes having a first area and provided together within a first zone of the grid and a second group of holes having a second area and provided together within a second zone of the grid, said second area is different from said first area."

Nordin teaches a plurality of holes, which are not from etched metal as stated by the Examiner, but are rather from expanded metal. See claim 1 of Nordin. In addition, all of the holes in Nordin are the same size, and thus, there is only one group of holes. Townsend teaches a plurality of holes and holes having different sizes. However, Townsend does not teach or suggest that there is a first group of holes having a first area and provided together within a first zone of the grid and a second group of holes having a second area and provided together within a second zone of the grid and that the second area is different from the first area. Instead, Townsend states that the visor section is formed by die cutting a pattern of circular openings as shown of five different sizes. See column 7, lines 59-64. When viewing Figure 7 and knowing that there are five different sizes of holes, it is clear that Townsend teaches that the holes of different sizes are interspersed among each other. There

is nothing in Townsend that teaches or suggests grouping holes of one size together and then groupings holes of a second size together. In fact, Townsend specifically teaches away from this limitation at column 7, lines 61-64, which states, "it is understood that the visor might be formed with holes of any geometric shape or design of uniform size or of different sizes as desired." Accordingly, Townsend does not teach or suggest the claimed limitation.

The Examiner has responded to this argument by stating that the visor of Townsend inherently has many zones and that there are holes of the same diameter that are located adjacent to one another and which broadly defines a group within a zone. Applicant respectfully traverses.

First, the Examiner has acknowledged that the holes appear randomly dispersed along the visor. Second, as explained above, Townsend specifically teaches that the holes might be formed with holes of any geometric shape or design of uniform size or of different sizes as desired. Thus, there is no teaching of a first zone or a second zone as claimed. "To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances not sufficient." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). As in Townsend, just because there is the mere possibility that certain holes of the same size may happen to fall in the same generally area does not mean that the Examiner has established inherency. In addition, because the express teaching is that the holes can be of any design and there is no specific pattern, there cannot be an inherent disclosure that requires the holes of one size to be in one zone and the holes of another size be in a second zone. Accordingly, Applicant respectfully request that the rejection as to claims 7-8 and 10-13.

Claims 14-19 include the following limitation: "a plurality of light permeating holes in the grid, the plurality of light permeating holes includes a first group of holes having a first light transmission and a second group of holes having a second light transmission, wherein the first group of holes are disposed in an upper central zone of the grid and the second group of holes are disposed in a second zone, the second zone is located below the first zone, and the second light transmission is less than the first light transmission."

As explained above, Nordin teaches a plurality of holes, however, there is only one group of holes that are all the same size. Thus, at most Nordin teaches that the first group of holes has a first light transmission. Nordin does not teach that there is a second group of

holes having a second light transmission. Townsend teaches a plurality of holes and holes having different sizes and thus, at most teaches that there are two groups of holes having two light transmissions. However, Townsend does not teach or suggest that there is a first group of holes are disposed in an upper central zone and the second group of holes is disposed in a second zone of the grid and that the second area is located below the first zone. Instead, at most, Townsend teaches that the holes of different light transmissions are interspersed among each other and thus, Townsend does not teach or suggest the claimed limitation. Moreover, the arguments present above regarding inherency also apply to these claims. Accordingly, Applicant respectfully requests that the rejections as to claims 14-15 and 17-19 be withdrawn.

Claims 20-23 include the following limitations: "a plurality of light permeating holes in the grid, the plurality of holes having a first group of holes all having a first area and provided together within a first zone of the grid, the first zone being provided in front of the wearer's eyes, and the plurality of holes having at least a second group of holes all having a second area smaller than the first area and provided together within a second zone of the grid, said second zone being located below the first zone." Again, as explained above, neither Nordin nor Townsend teach or suggest those limitations. Nordin and Townsend teach or suggest that the first zone is provided in front of the wearer's eyes.

In Nordin, since all of the holes are the same size, there is no teaching of a first zone in front of the wearer's eyes and the second zone being located below that zone. In Townsend, as explained above, there are not zones. Moreover, in Townsend, the visor projects outwardly from the forehead of substantially perpendicularly thereto and above the normal line of sight of a user. See col. 12, lines 34-36. Thus, the visor is not located in such a manner as to protect the wearer's face, and in particular, the eyes. In fact, in Townsend, the visor leaves the wearer's face completely unprotected and fully exposed to airborne particles and sharp objects. As such, Townsend does not teach or suggest that the first zone is provided in front of the wearer's eyes. Accordingly, Applicant respectfully requests that the rejection as to claims 20-23 be withdrawn.

In addition, with regard to claims 12, 13, 18, 19, 22, and 23, Nordin and Townsend do not teach or suggest these additional limitations. Those claims require that the first group of holes and the second group of holes have a same C-C spacing in a lateral direction or that the first group of holes and the second group of holes have a same C-C spacing in a vertical direction. Because Nordin only has one group of holes Nordin does not teach or suggest this limitation. In addition, Townsend also does not teach or suggest this limitation. The C-C distance varies between holes of identical size and between holes of different size. Because

Nordin and Townsend do not teach or suggest the limitations discussed above regarding the first group of holes and the second group of holes, Nordin and Townsend do not teach or suggest these additional limitations regarding the first and second group of holes. Accordingly, Applicant respectfully requests that these additional rejections be withdrawn.

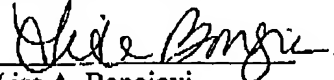
Moreover, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992); MPEP § 2143.01. In this case, one skilled in the art would not have combined Nordin and Townsend. Townsend is directed to a visored hat that provides a large effective sun shade area. While Townsend does disclose a visor enabling the wearer to have unobstructed view, this is because the Townsend peak is not located in front of the wearer's eyes and thus, the visor does not protect the eyes in Townsend. In fact, the wearer does not look through the holes, which is the case with a safety visor. Accordingly, one skilled in the art would not have combined Townsend with Nordin to reach the claimed invention.

In view of the foregoing, it is respectfully submitted that the instant application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicant's attorneys would be advantageous to the disposition of this case, the Examiner is cordially requested to telephone the undersigned.

In the event the Commissioner of Patents and Trademarks deems additional fees to be due in connection with this application, Applicant's attorney hereby authorizes that such fee be charged to Deposit Account No. 06-1130.

Respectfully submitted,

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